IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 3RD JULY 2006 / 12TH ASHADHA,1928

ST.Rev..No. 95 of 2004()

TA.231/2002 OF THE KERALA SALES TAX APPELLATE TRIBUNAL,TVM.
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REVISION PETITIONER/APPELLANT/ASSESSEE

BIJU RAMESH, SUMPTHRIPTHI,
EAST FORT, THIRUVANANTHAPURAM.

BY ADV. SRI.K.B.MUHAMED KUTTY
SRI.K.M.FIROZ

RESPONDENTS: RESPONDENT/REVENUE

STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, TAXES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. V.V. ASOKAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 03/07/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR,&
K. M. JOSEPH, JJ.

S.T. REV. NO. 95 OF 2004

Dated this the 3rd day of July, 2006

JUDGMENT

Ramachandran Nair,J.

The order under challenge is the appellate order of the Sales Tax Appellate Tribunal, sustaining a suo motu revisional order passed by the Deputy Commissioner under Section 35 of the KGST Act. The main question raised is whether the Deputy Commissioner has jurisdiction under Section 35 of the Act to reopen the assessment on the ground that there is escapement of turnover. Counsel for the revision petitioner contended that the Officer has once revised the assessment under Section 19 of the Act to make good some omission in the turnover accounted by the petitioner. According to him, if at all there is escapement of turnover, only the Officer could revise the assessment and Deputy Commissioner has no power to revise the assessment for bringing to tax the escaped turnover. We do not think there is any need for this Court to decide the question again because it is a well settled position by several decisions of this Court that jurisdiction of the

Deputy Commissioner is supervisory and in exercise of the power under Section 35 of the Act he is free to revise the assessment for bringing to tax escaped turnover. In this particular case, the reason for interfering with petitioner's assessment is that even though petitioner was a licensee in respect of one foreign liquor shop and one arrack shop, the turnover of that business was not assessed at the hands of the petitioner. Petitioner's case is that petitioner had entrusted the foreign liquor shop and the arrack shop with another person with the approval of the Department and such other person has been assessed to sales tax. Petitioner has produced Annexure K order stated to be a copy of the assessment order issued in the name of the transferee. We do not think there is any necessity for us to consider the assessment in the case of transferee for the first time because the Deputy Commissioner in his proceedings has left open the issue for decision by the Officer. Petitioner is absolutely free to produce the assessment order of the transferee and the Officer can cross-check with the Officer who made the assessment or call for records to verify whether the two shops' turnover, which was brought in the petitioner's assessment, was assessed at the hands of the transferee. The Tribunal while affirming

the order of the Deputy Commissioner has given complete freedom to the petitioner to produce documents and establish petitioner's case that the turnover in respect of two shops has been assessed at the hands of the transferee and tax paid. Had the transfer of licence been brought to the notice of the Officer by the petitioner at the time of his original assessment, this problem would not have arisen later. Therefore we find no ground to interfere with the Deputy Commissioner's order under Section 35 of the Act, which is confirmed by the Tribunal. However, we are of the view that the Tribunal was not justified in holding that petitioner is not entitled to credit of the tax paid by the transferee in his assessment. Of course, provision for giving credit is contemplated only under Rule 9(k)(i) of the KGST Rules which provides that turnover in respect of which tax if any paid by the agent can be excluded from the turnover of the principal. We do not know what exactly is the relationship between the petitioner and the transferee because copy of the transfer agreement is not produced by the petitioner before any authority, including this Court. We therefore leave open this issue also to be decided by the Officer in accordance with statute. However, we make it clear that same turnover in respect of the same shops should

not be assessed at the hands of two dealers. It should also be examined by the Officer whether admittedly there is transfer of licence, and if there is no transfer of licence, and if the petitioner purchased and sold the liquor, then the liability falls on the petitioner, being the first seller. We accordingly, dismiss the Tax Revision confirming the order of the Tribunal sustaining the order of the Deputy Commissioner under Section 35 of the Act and leaving freedom to the petitioner to raise all contentions before the Officer for him to complete assessment in accordance with statute.

(C.N. RAMACHANDRAN NAIR)
Judge

(K.M. JOSEPH)
Judge